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## Third Committee

**Summary record of the 36th meeting**
Held at Headquarters, New York, on Monday, 1 November 2010, at 10 a.m.

*Chair:* Mr. Tommo Monthe ..... (Cameroon)

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* Items which the Committee has decided to consider together.

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*The meeting was called to order at 10.10 a.m.*

**Agenda item 66: Elimination of racism, racial discrimination, xenophobia and related intolerance**

**(a) Elimination of racism, racial discrimination, xenophobia and related intolerance** (A/64/18, A/65/18, A/65/292, A/65/312 and A/65/323)

**(b) Comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action** (A/65/295 and A/65/377)

**Agenda item 67: Right of peoples to self-determination** (A/65/286 and A/65/325)

1. **Ms. Nicholson** (Deputy Director of the Office of the High Commissioner for Human Rights) introduced a number of reports, including the report of the Secretary-General on the status of the International Convention on the Elimination of All Forms of Racial Discrimination (A/65/292) and the report of the Secretary-General on the financial situation of the Committee on the Elimination of Racial Discrimination (A/65/312). Introducing the report of the Secretary-General on global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action (A/65/377), she said that it included a summary of contributions received from 16 Member States and four United Nations entities on the measures they had undertaken in that context. It also provided updates on the activities of the United Nations human rights mechanisms and other entities, with a focus on the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action and highlighted the roles of the Durban mechanisms. Lastly, she introduced the report of the Secretary-General on the right of peoples to self-determination (A/65/286).

2. **Mr. Muigai** (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance) drew the Committee's attention to his interim report on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/65/295), his report on the implementation of General Assembly resolution 64/147 (A/65/323) and his reports to the Human Rights Council (A/HRC/14/43 and A/HRC/15/53).

3. All stakeholders should pay attention to socio-economic discrimination against members of specific groups, political manipulation of racist or nationalist ideology and how the concept of so-called national identity was debated within a country. Hate speech was a factor that exacerbated conflicts and, in the context of post-conflict situations, it was essential to address the root causes of a conflict to avoid the resurgence of tensions and violence. That was of particular importance in the aftermath of internal conflicts, when people who had fought against each other continued to live together. Racism could lead to genocide, war crimes, ethnic cleansing and crimes against humanity. In that context, it was the State's primary responsibility to protect its population. However, the responsibility to protect was also an obligation of the international community.

4. The Special Rapporteur strongly condemned all acts of violence or discrimination against persons based on their religion or belief and attacks against religious sites. He was, moreover, deeply concerned by reports of discriminatory profiling which targeted specific groups of the population based on their perceived ethnic or religious background. The issue of bans or restrictions on religious symbols, including minarets and Islamic dress, was a delicate question that raised several human rights issues. An independent and impartial judiciary should assess, on a case-by-case basis, whether those restrictions ran counter to, inter alia, the freedom to manifest one's religion, the freedom of expression or the principle of non-discrimination.

5. Vigorous interrogation and criticism of religious doctrines and their teachings was thoroughly legitimate and constituted a significant part of the exercise of freedom of expression and freedom of religion. However, ways should be found to combat the promotion of racial and religious hatred. In that regard, human rights bodies and mechanisms needed to ensure that State obligations were fully implemented before contemplating any additional measures: it was vital to anchor the debate and subsequent action in the relevant existing international legal framework.

6. Turning to the human rights challenges faced by migrants, refugees and asylum seekers, the Special Rapporteur said that it was through common approaches involving a large range of actors, including civil society, that migrants would enjoy enhanced protection against racism and xenophobia. The

collection of ethnically disaggregated data was an essential tool for identifying persons and groups affected by racial discrimination, understanding the inequalities they faced and designing appropriate legislation and policies. Certain States were concerned that the collection of such data could aggravate tensions between groups; in order to minimize the risk of that occurring, States must abide by key principles, including self-identification, the right to privacy, the protection of personal data and the involvement of relevant stakeholders.

7. Combating racism in connection with sport required more than the adoption of anti-discrimination legislation; public and private attitudes which justified and perpetuated racism must also be addressed. Sport could help promote a culture of tolerance and non-discrimination because it could provide an opportunity for all to witness how individuals from diverse ethnic, national and religious backgrounds could interact in a harmonious manner.

8. In the context of activities he had undertaken during the previous year, the Special Rapporteur thanked the Governments of the United Arab Emirates and Singapore for their cooperation during his visits to those countries and said that Singapore was rightly proud of its diverse and tolerant society. The Singaporean Government was constantly seeking to promote social cohesion, religious tolerance and what it referred to as racial harmony. Furthermore, it had endeavoured to put in place laws, policies and institutions that sought to combat threats posed by racism, racial discrimination, xenophobia and related intolerance. However, the legitimate goal of searching for racial harmony might have created blind spots in the measures pursued by the Singaporean Government. He also thanked the Government of Bolivia, which had confirmed dates for his visit to that country and said that he was in discussions with the Government of South Africa concerning an eventual mission there.

9. The continued existence of extremist political parties, movements and groups posed a major challenge to human rights and democracy. A comprehensive approach was crucial in efforts to counter that phenomenon. States must adopt legislation in line with international human rights standards and complement their legislative framework with a broad range of preventive and proactive measures. In that regard, a solid legal framework should be based on the International Convention on the Elimination of All Forms of Racial Discrimination, in particular its fourth article, and he called for the universal ratification of that instrument. States should ensure that their domestic criminal law recognized that racist or xenophobic motivations or aims constituted aggravating circumstances that warranted increased penalties. Moreover, effective implementation of adopted legislation must follow the normative process. That implied, inter alia, combating impunity and prosecuting the perpetrators of racially motivated crimes. Due attention should also be paid to ensuring access to justice, adequate reparations and assistance for victims.

10. States were encouraged to provide law enforcement agents with adequate human rights training and implement measures to ensure their interaction with affected communities. Such steps should reduce fear and mistrust and contribute to better reporting of racist crimes. States should also adopt policies that addressed the root causes for the existence of extremist political parties, movements and groups. He called on traditional political parties to explicitly condemn political discourse that incited racial discrimination and urged them to avoid alliances with extremist political parties of a racist or xenophobic character.

11. **Mr. Vigny** (Switzerland) said that in order to truly promote diversity, emphasis should be placed on the multiplicity of modern identities. That was particularly the case in debates on national identity. Switzerland supported the Special Rapporteur's assertion that, in combating racial and religious hatred, States should not invoke the concept of defamation of religion but should adopt a law-based approach that drew, in particular, on article 20 of the International Covenant on Civil and Political Rights. Switzerland believed that existing international mechanisms were sufficient to effectively combat racial and religious hatred. Furthermore, it had amended its legislation so that it was in line with the International Convention on the Elimination of All Forms of Racial Discrimination.

12. The Office of the High Commissioner for Human Rights had mandated experts to collate information provided by Member States with a view to convening a series of workshops on the incitement to racial and religious hatred. That process, in which the Special Rapporteur and his predecessor had participated, fostered a better understanding of the links between articles 19 and 20 of the International Covenant on

Civil and Political Rights, he asked the Special Rapporteur how he could actively participate in that process and ensure that his voice was heard in order to reflect his differentiated approach on that matter.

13. **Mr. Michelsen** (Norway) said that Norway fully supported the Special Rapporteur's call on States to take all appropriate measures to implement the Durban Declaration and Programme of Action and the outcome document of the Durban Review Conference. Norway agreed with the Special Rapporteur's emphasis on preventative measures and, in that regard, asked what concrete measures should be taken to promote awareness and build a society based on tolerance, respect for cultural diversity, multiculturalism and non-discrimination.

14. **Mr. Siddique** (Pakistan), drawing attention to the Special Rapporteur's recommendation that Governments should address early warning signs through a wide range of measures, said that his country would appreciate more information on that concept, especially with regard to incitement to racial and religious hatred and the concept of responsibility to protect. Although the Special Rapporteur had urged States to combat extremist parties, movements and groups, his reports had not mentioned recent activities by extremist political parties and groups in certain Western countries which had resulted in incitement to discrimination against Islam and Muslims. With regard to bans or restrictions on religious symbols, he said that Pakistan disagreed with the Special Rapporteur's belief that an independent and impartial judiciary should assess their impact on human rights and rule on their legality. He asked how a judicial official could hand down rulings on purely religious issues, including the importance of religious symbols and how they were linked to an individual's freedom of religion.

15. **Mr. Mosoti** (Kenya), asked the Special Rapporteur what early warning signs should be looked for, at what point those signs indicated that intervention by the State was warranted and what action should then be taken. Noting that racism could be a very subtle phenomenon and that those who incited racism could not always be prosecuted under existing criminal legislation, he asked what could be done to remedy that situation. He also noted that ethnic strife and other issues, including genocide, were sometimes interrelated and asked the Special Rapporteur if he was collaborating with other mechanisms, including the Special Adviser on the Prevention of Genocide. Lastly, he asked what safeguards could be implemented to ensure that legitimate bodies were not used to promote racism.

16. **Ms. Gintersdorfer** (European Union) said that early warning signs were critical for identifying potential conflict situations and, in that regard, requested further information on coordination between the Special Rapporteur and, inter alia, the Special Adviser on the Prevention of Genocide. She asked the Special Rapporteur for his views on how his work in the field of early warning mechanisms could serve as a basis for follow-up action by the Human Rights Council.

17. To ensure that legal debates were anchored in the existing international legislative framework, they should focus on combating the promotion of racial or religious hatred rather than on the defamation of religions. Defamation of religions was not a human rights concept and she welcomed the Special Rapporteur's efforts to categorize incidents with a religious dimension as that would provide input when decisions were made as to whether incidents should be addressed from a human rights perspective.

18. Migrants' rights must also be respected by the States in which they resided. The European Union would ensure that migration policies were consistent with applicable international human rights instruments. The European Union was not convinced that it was necessary to focus specifically on neo-Nazism in the fight against racism, racial discrimination, xenophobia and related intolerance and supported the Special Rapporteur's comprehensive approach.

19. **Ms. Chan** (Singapore) said that the Special Rapporteur's visit to her country had given Singaporeans the opportunity to share and learn about successful practices and policies to promote racial harmony. Singapore had taken note of his observations, including references to blind spots in Singapore's policies and looked forward to further engagement when the Special Rapporteur's final report was issued.

20. **Ms. Jørgensen** (Denmark) said she agreed that all forms of racism and discrimination should be addressed with the same emphasis and determination, while all victims should receive the same attention and protection. It would be interesting to hear from the Special Rapporteur what the main challenges had been in that regard. She also wondered what practical measures States could take with regard to consulting

minority groups at all stages of the collection of ethnically disaggregated data. She asked how States could counter the increasing use of the Internet for propaganda purposes while not interfering with the freedom of opinion and expression.

21. **Mr. Lukiyantsev** (Russian Federation) said that unfortunately the report contained in document A/65/323 did not cover all of the Special Rapporteur's detailed and comprehensive work on key aspects of General Assembly resolution 64/147, perhaps because of the vast range of issues addressed. In future, the Special Rapporteur should devote equal attention to all issues to which Member States had drawn attention. The reports for the sixty-sixth session should address the glorification of Nazism, the holding of meetings of former Waffen SS members, and the destruction and demolition of monuments erected in honour of those who fought against fascism during the Second World War.

22. **Ms. Halabi** (Syrian Arab Republic) said that the credibility of the Special Rapporteur's reports was undermined by their lack of any reference to the racist crimes, practices and policies of Israel, the occupying Power, against the Palestinian people, which included killings, land confiscations, the establishment of settlements, imposing a siege on Gaza and the building of a racist separation barrier. The Syrian delegation was shocked by those omissions. She also drew attention to incidents occurring in Umm al-Fahm and other villages where Israel was attempting to expel Palestinians from their land and to the pledge of allegiance to the Jewish State which had to be taken by non-Jews. She asked what the international community and United Nations bodies could do to halt the genocide and racist practices that occurred daily in the Occupied Arab Territories.

23. **Ms. Vieira de Paula** (Brazil) said she agreed that negative stereotyping of individuals based on their religion and belief should be addressed under the framework of articles 19 and 20 of the International Covenant on Civil and Political Rights. Political platforms based on racism, xenophobia and doctrines of racial superiority and related discrimination should be condemned as incompatible with democracy. Her delegation commended the Special Rapporteur for the way he had addressed that critical issue in his report. Finally, she thanked him for his written contribution to the United Nations seminar on data collection and the use of indicators to promote and monitor racial equality and on discrimination, which had been held in Rio de Janeiro from 3 to 5 May 2010.

24. **Mr. Sammis** (United States of America) said that it was important for Governments to have effective legal regimes in place to address acts of discrimination. Protection of the freedom of expression promoted mutual respect and pluralism and was essential to human dignity, robust civil society, and political and economic development. Hateful or discriminatory speech would wither in the face of public scrutiny, while, in contrast, Government censorship or prohibition of speech based on stereotypical or intolerant content would only force hateful ideology to find new and alternative ways in which to manifest.

25. The United States encouraged civil society actors, including religious groups, to participate in interfaith dialogue and service projects, education efforts, and alliance-building with domestic and international religious groups and influential leaders in order to foster understanding within and among communities and to promote conflict prevention. He thanked the Special Rapporteur for highlighting preventive measures aimed at fostering a peaceful society. It would be interesting to hear about outreach measures and educational tools that the Special Rapporteur would recommend for promoting the participation of all in public life.

26. **Mr. Mohamed** (Maldives) said that the Maldives, as a Muslim country, was saddened by the rising tide of Islamophobia with increasing acts of discrimination and denigration resulting in acts of violence against Muslims and their sacred persons. Such manifestations of intolerance were based on misguided understandings of Islam and its followers, and thwarted the United Nations in its mission to bring peace and prosperity and the collective pursuit of a deeper understanding and dialogue among all societies.

27. The Maldives understood the difference between State-sanctioned Islamophobia and anti-Muslim activities that could be attributed to marginal segments of the population. However, each State was responsible for ensuring a judicious balance between freedom of expression and the rights of religious followers to practice their traditions and beliefs in peace and security.

28. The Special Rapporteur had expressed concerns in his report to the Human Rights Council (A/HRC/15/53) relating to the Maldives' constitutional

provisions for citizenship. However, the criteria for citizenship were not designed to discriminate against non-Muslims or to incite intolerance against other religions. Rather, they reflected historical and social realities in a country where citizenship and Islam were mutually reinforcing elements of national identity among a small and homogenous Muslim population. The requirements for citizenship in the Maldives had never yet been contested in the country's independent courts of law, which indicated the absence of any encroachment on the human rights of the people.

29. **Mr. Saadi** (Algeria) asked whether the International Convention on the Elimination of All Forms of Racial Discrimination was sufficient to combat all forms of discrimination, particularly on the basis of religion, and asked whether additional international legislation should be adopted to complement the Convention and expand the scope of its protection. He also asked whether the collection of ethnically disaggregated data was not in itself a further form of discrimination, especially as the Special Rapporteur had affirmed that individuals should enjoy the right to privacy and to choose whether or not to provide details of their ethnic group.

30. **Mr. Muigai** (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance) said he would not be able to respond to all of the comments made but would consider most of them in his future reports. In the second year of his mandate, he had tried to expand his cooperation with other mandate holders, including the mandate holders on freedom of religion or belief and the freedom of expression, and with the Committee on the Elimination of Racial Discrimination. Cooperation with those institutions had enabled him to attend many conferences, workshops and forums where ideas on how to work best together had been shared.

31. With regard to concrete measures to eliminate racism, there were two outstanding issues. It was important to continue the international debate, but also to strengthen institutional mechanisms: create more robust legal systems, promulgate more coherent policies and create a mechanism for enforcement. Despite the extensive international debate, he had found very few concrete efforts being made when he visited individual countries and regions. The ideological debate was important and should continue, but was not a substitute for practical action.

32. His attention had been drawn to the apparent lack of recent activity in Western countries. However, his full report on that issue had included many references to serious and unacceptable developments taking place in Western countries.

33. Turning to the question of religious symbols, he could not agree with the representative of Pakistan that it was entirely an issue of religion. It was also a juridical question. Individuals had the right to dress in a way that was important to their culture, religion and lifestyle, but wearing a certain form of dress in a school was not the same as wearing it in a military installation. Only a juridical body could decide what was appropriate in certain situations. In a recent constitutional court case in Kenya, the judge had decided that a public high school could not deny a young teenage girl the right to wear her headdress. Such decisions had to be made in the specific context of each case.

34. Much had been learned from the Rwandan genocide about early warning signals. Almost invariably, outbreaks of genocidal war had been preceded by a systematic increase in racist speech and in hate speech in general. The Special Adviser for the prevention of genocide had agreed with the Special Rapporteur that Governments and the United Nations could develop early warning mechanisms on that basis.

35. Despite the signs of a growing intolerance in the world to certain religions, including Islam, he did not subscribe to the view that religion, as a body of belief, should be protected from challenges as to the robustness or purity of doctrine, or its internal consistency and coherence. International law should protect individuals from intolerance generated by religious and racial hatred. He was therefore against racial profiling, religious profiling and intolerances that made it difficult for members of any religion to exercise their freedom of religion. If the Human Rights Council and the Assembly were serious about protecting human beings from racial and religious victimization, they would have to stay within the framework of contemporary international human rights law. The representative of Algeria had asked whether the Committee on the Elimination of Racial Discrimination should discuss whether the Convention was sufficient. That was a legitimate way of working within the structure of existing law rather than creating unsolvable ideological disputes around it.

36. In response to the comments of the representative of the Russian Federation, the Special Rapporteur acknowledged that time and resource constraints had prevented his report from being more detailed. The glorification of Nazism and the destruction of monuments erected after the Second World War were serious issues and he would endeavour to cover all of the issues mentioned in his future reports.

37. In response to the comments made by the representative of Syria, he said that he had not deliberately attempted to downplay or accord less significance to the human rights situation in Israel. He was aware of the very detailed report submitted by the Goldstone Committee and should perhaps have highlighted those very serious human rights questions in more detail.

38. It was very important for the Special Rapporteur to be able to visit individual countries. Some of the best examples he had seen of efforts to reinforce community efforts against discrimination had been in Germany. He had also seen such efforts in Singapore and in the United Arab Emirates. Yet he could only know about such efforts if he was able to visit the countries concerned.

39. **Mr. Kemal** (Chairperson, Committee on the Elimination of Racial Discrimination) said that his Committee had greatly appreciated General Assembly resolution 63/243, which had extended its annual meeting time by two weeks from 2009 to 2011. Two years previously, the Committee had had a backlog of 29 reports, partly owing to the high number of States parties to the International Convention on the Elimination of Racial Discrimination, and partly as a positive result of the universal periodic review mechanism. Since the Committee had been granted the additional meeting time, it had been able to increase significantly the number of periodic reports considered each year. It had also adopted two decisions and considered a number of situations under its early warning and urgent action procedures. Finally, four individual complaints had been considered under article 14 of the Convention.

40. The Committee continued to support greater efficiency and coherence in the human rights treaty body system. It was willing to learn from the good practices of other treaty bodies and to share its own positive experiences. It was also committed to alleviating the burden on States parties and to improving its dialogue with them, and had decided that the Country Rapporteur should convey to States parties a brief list of main themes based on their reports and other information received in order to guide the dialogue with the State's delegation during consideration of the respective report. Committee members remained free to raise additional issues during the dialogue and the initial results of the new method had been satisfactory.

41. The Committee was fully committed to the efforts of the United Nations High Commissioner for Human Rights to harmonize procedures between the different treaty bodies. The first annual meeting of chairpersons of treaty bodies held at the regional level had been an important step in learning more about the specific conditions in each region. It would be very valuable to continue the effort and to communicate with every region, thereby improving the outreach to States parties.

42. The Committee continued to promote the Convention through a range of events and activities. It had recently adopted General Recommendation No. 32 elaborating on the meaning of special measures within the context of the Convention, in order to provide practical guidance to States parties in the discharge of their treaty obligations. It had also adopted General Recommendation No. 33 on follow-up to the Durban Review Conference, expressing its views on fighting racism, racial discrimination, xenophobia and related intolerance. The Committee had collaborated with the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action and had decided to refer to the Declaration in all its concluding observations. In addition, it had played an active role at all stages of the Durban Review Conference.

43. Given that 2011 had been designated the International Year for People of African Descent, the Committee had decided to hold a thematic discussion on racial discrimination against people of African descent during its next session. Members of the Committee had made substantive contributions to the discussions on the theme of structural discrimination against Afro-descendants as well as identifying proposals for activities to take place during 2011.

44. The Committee paid close attention to the work of the Human Rights Council, including matters related to the universal periodic review process and considered

that States should include information on measures to prevent and combat racism, racial discrimination, xenophobia and related intolerance in their national reports.

45. Cooperation with different partners and interaction with various stakeholders was a regular feature of the Committee's work and it appreciated the valuable input provided by the United Nations High Commissioner for Refugees and the International Labour Organization at each session. The Committee had also held useful discussions on issues of common concern with some of the special procedures. In addition, independent national human rights institutions were increasingly involved in the reporting process as well as playing an important role in monitoring implementation of the Committee's recommendations.

46. The Committee considered that its close cooperation with NGOs was crucial for the promotion and implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and had decided to hold informal meetings with them at the beginning of each week of its sessions, similar to the practice of other treaty bodies.

47. Gender parity within the Committee could be resolved if States parties elected more women to serve on it. However, States should ensure the independence of experts when nominating candidates to the Committee and throughout their membership in the treaty bodies.

48. The Committee still maintained its goal of achieving universal ratification of the Convention and called on the Third Committee to encourage States which had not yet acceded to it to sign and ratify it as a matter of priority. It also called on States to withdraw reservations contrary to the object and purpose of the Convention. Individuals were empowered to file complaints regarding violations of the Convention. Regrettably, only 54 of the 173 States parties had accepted the procedure; it was to be hoped that more States parties would recognize the Committee's competence to receive and consider communications.

49. Even though the definition of racial discrimination in article 1 of the Convention was very precise, difficulties sometimes arose owing to State interpretation of its scope, leading States parties to deny racial discrimination or minimize its extent.

50. The Committee on the Elimination of Racial Discrimination had achieved both substantial and procedural progress over the past 40 years. Above all, it had managed to keep innovating and to adapt its procedures and jurisprudence to address racial discrimination in a changing world. The Committee's constructive interpretation of the definition of racial discrimination encompassed the issues of caste and descent, indirect discrimination and dual or multiple forms of discrimination. It had focused on a legal analysis of racial discrimination indicators, and on socio-economic and cultural indicators, resulting in the identification of social groups that were particularly vulnerable.

51. Currently, 23 States parties' periodic reports were pending consideration and, if the trend continued, a backlog would accumulate. It had therefore decided to ask the General Assembly to approve one additional week of meeting time per session starting in 2012 and hoped that the Third Committee would support the request.

52. Lastly, the Committee on the Elimination of Racial Discrimination relied on the Third Committee's continued support in order to fulfil its mandate. It was fully aware of the need to ensure that its review of State party reports be conducted in a timely manner and reporting backlogs eliminated. Its constant goal was to promote the Convention, to enhance cooperation with other human rights organizations, and to continue working towards an improved United Nations system.

53. **Mr. Siddique** (Pakistan) said that Pakistan was making every effort to implement the recommendations of the Committee on the Elimination of Racial Discrimination and to fulfil its commitments under the Convention. It had ratified the International Covenant on Civil and Political Rights in 2010 and was making progress towards its incorporation into domestic law. Significant improvement had been made in the collection of data on ethnic minorities and a national human rights institution was being established as recommended by the Committee.

54. Pakistan wished to know whether the guidelines for the early warning and urgent action procedures needed to be modified to take into account emerging forms of racism, racial discrimination, xenophobia and related intolerance, especially those targeting specific religious groups. It would also be interested to know

the Chairperson's views on the recent efforts to streamline the work of treaty bodies by linking their reporting mechanisms.

55. **Mr. Vigny** (Switzerland) said that Switzerland supported the request to extend the authorization to the Committee to meet, on a temporary basis, for four weeks each session.

56. **Ms. Vieira de Paula** (Brazil) said that the forty-fifth anniversary of the adoption of the Convention represented an opportunity for States to reaffirm their commitment by ensuring its effective implementation. In Brazil, the Statute of Racial Equality had entered into force in October 2010 after 10 years of comprehensive discussions in Congress involving civil society and social movements. It reinforced the obligation of State and society to guarantee equal opportunities to Brazil's Afro-descendant population and encompassed a broad range of measures of affirmative action for both public and private sectors. In addition, it provided specific protection for Quilombola communities, women of African descent and followers of religions of African origin, reinforcing the provisions of the Brazilian Constitution and strengthening democracy.

57. **Mr. Michelsen** (Norway) said that the Committee had drawn attention to important challenges in the context of racial discrimination in a constructive and comprehensive manner. However, Norway was concerned that a large number of reports remained overdue, and encouraged all States parties to fulfil their obligation to submit their periodic reports promptly.

58. Norway fully supported the ongoing discussions regarding possible ways of addressing the Committee's increasing workload, and endorsed the request to allow the Committee to meet, on a temporary basis, for four weeks each session. It also supported the Committee's efforts to strengthen cooperation with civil society and would be interested to hear, at its next session, an assessment of its informal meetings with NGOs.

59. **Ms. Gintersdorfer** (European Union) said that the European Union attached great importance to all aspects of the work of the Committee on the Elimination of Racial Discrimination and urged all States that had not yet done so to become parties to the Convention. The international community should work together to prevent racial discrimination and the Committee's role, which included early warning activities and urgent action procedures, should not be underestimated. She would be interested to hear Mr. Kemal's views on the complementarity of the Committee's work with the initiatives of other members of the United Nations system relating to early warning and prevention.

60. Concurrent reporting obligations under different human rights mechanisms could entail challenges for Governments. Nevertheless, delays in compiling reports could indicate a lack of political priority given to human rights treaty obligations, and regular dialogue was essential. As a last resort, States encountering difficulties should advise the relevant treaty bodies in order to establish provisional priorities in their reporting obligations. It would be useful if Mr. Kemal could provide information on any initiatives taken in cooperation with States and in consultation with different treaty bodies. Had the Committee been asked for technical assistance?

61. The European Union welcomed the reduction in the backlog of pending reports and would like to know whether the Committee was considering other measures to improve its effectiveness and identify efficiencies in working methods and costs; also to what extent it was working with other treaty bodies and the Office of the High Commissioner for Human Rights in that regard.

62. While appreciating the ongoing efforts to ensure regular interaction with civil society and national human rights organizations, the European Union would be interested to learn of any particular challenges to addressing racial discrimination that required specific and sustained joint attention and initiatives.

63. **Mr. Mamdouhi** (Iran) said that he would be grateful if Mr. Kemal would elaborate on the measures that should be taken at the national and international level to retain the momentum gained during the Durban Review process. It would also be useful if he would inform the Third Committee of any recommendations for the effective implementation of the commitments made by States parties in the outcome document in line with the Committee's overall mandate, since the States retained primary responsibility for combating racism, racial discrimination, xenophobia and related intolerance.

64. The issues and discussions of the Committee on the Elimination of Racial Discrimination should remain linked to the subject of racism and fall within the framework of the Durban Declaration and Programme

of Action, and the outcome document of the Durban Review Conference. In that respect, he wished to know what steps had been taken or were planned in order to enhance cooperation with the mandate holders of the special mechanisms concerned.

65. **Mr. Kemal** (Chairperson, Committee on the Elimination of Racial Discrimination) said that he appreciated the Third Committee's support for the extension of his Committee's meeting time and assured delegates that every effort was being made to enhance the efficiency of its working methods, in particular to ensure that the meeting time was used effectively.

66. Early warning had been one of the Committee's important functions since the cases of genocide in the 1990s, the intimations of which had been missed or minimized by the international community. His Committee had set up a working group on early warning which was constantly monitoring country situations between reports, often based on information from the people affected, usually indigenous peoples or minorities. Once the working group had examined the situation, letters were sent to the respective Government expressing the Committee's concerns.

67. In the case of mandate holders, they were invited to dialogue with the Committee. Regarding further measures to harmonize and increase efficiency, his Committee was in touch with the other treaty bodies and learned about their best practices through the inter-committee meeting.

68. With regard to the effective implementation of the Durban Declaration and the question of religious intolerance, he clarified that his Committee was not directly concerned with discrimination on religious grounds. It would only take action if there was an overlap between such discrimination and race. Consequently, the Committee would decide on a case-by-case basis whether intervention was justified. However, the Durban Declaration was mentioned in all the concluding observations and its principles were present in the Convention.

69. Since the adoption of the Convention, apartheid had been abolished, but new forms of racial discrimination had emerged; for example, Afro-descendants were discriminated against in different parts of the world; so the struggle never ended.

70. Lastly, he observed that treaty bodies met for only two months each year, and it would be interesting to reflect on how the immense expertise available could be utilized more fully and harnessed to promote human rights year round.

71. **Mr. Nikitin** (Chairperson-Rapporteur of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination) said that the Working Group was concerned that mercenaries had been [illegible]ed and convicted in only a handful of cases. The trend towards increased privatization of security was intensifying in many parts of the world, but appropriate oversight was lacking. Private contractors did not always operate with respect for international law standards. Growing dependency on private military and security companies raised the question of the extent to which States remained in control of sensitive activities such as defence and security.

72. Lawsuits against private security companies were rare. In some cases, allegations of human rights violations perpetrated by employees of private military and security companies were not even reported or investigated. The company Xe, formerly known as Blackwater, was facing several lawsuits. In one case, the judge had dismissed all indictments before trial on procedural grounds. Despite the lawsuits, the United States Government had just granted hundreds of millions of dollars in new contracts to the company.

73. Close to 60 per cent of United Nations offices used the services of private military and security companies, most of which were local. Their work with the United Nations gave them a positive image, and many of them lobbied intensely to obtain contracts in peacekeeping operations.

74. There was no system-wide policy in the United Nations governing the hiring or monitoring of such companies. Accountability issues were more complex when private military contractors were used by international organizations, as the concept of institutional responsibility of intergovernmental organizations remained elusive. The United Nations must take measures to ensure that security and protection functions, when outsourced, remained in accordance with the Charter of the United Nations, international human rights standards and proper oversight and management. Otherwise, there was a risk of incidents which could damage the image and

effectiveness of the Organization. The United Nations was engaged in a process to adopt a policy on the matter.

75. The Working Group had held regional consultations on the activities of mercenaries and private military and security companies and their regulation and monitoring. It had recently conducted a country visit to Equatorial Guinea, which had been affected by mercenary activities on several occasions, including during the 2004 coup attempt. During the visit, the Working Group had recalled that States had the right to combat mercenary activities in accordance with international human rights standards.

76. An initial version of a draft convention on the regulation of private military and security companies had been circulated in 2009 to some 250 experts, academics and non-governmental organizations. Comments and discussions had led to a new draft, circulated to Member States in early 2010. Another new draft had been presented to the Human Rights Council in September 2010. The proposed convention would be a legally binding regulatory instrument with more than 40 articles. It sought to change the international community's perception of private military and security companies as business as usual, fostering instead the view that such companies' work consisted of the provision of highly sensitive services requiring specific supervision and oversight by Governments, civil society and the international community.

77. The convention reaffirmed State responsibility to investigate, prosecute and punish perpetrators and to provide remedies for victims. A better system of national registration and licensing of companies was needed. The convention also recommended the creation of an international register of such companies operating internationally. Licensing would be contingent on the provision of compulsory training of personnel in international humanitarian law and human rights law. Criminal background checks of employees would be required. Through the convention, States could define the types of activities which should not be outsourced under any circumstances. The convention also provided for a United Nations-based monitoring mechanism and a complaints mechanism.

78. Another approach to regulating private security and military companies involved self-regulation through voluntary codes of conduct and the creation of clubs of privileged security companies that worked on contracts with wealthy nations and international organizations. Punishment for violations of the code of conduct did not involve legal or financial measures, but consisted merely of expulsion from the club.

79. A code of conduct was designed for companies, while a United Nations convention was an international instrument which was legally binding on States and established minimum standards for relations between States and companies. The Working Group regarded the approaches as complementary. It welcomed the initiative of the Government of Switzerland to set up an oversight mechanism of self-regulation by companies. However, that was only a first step towards more comprehensive international regulation.

80. United Nations Member States had voted in 2010 to establish an open-ended intergovernmental working group to consider the elaboration of an international regulatory framework, including a new convention. Member States should designate their representatives to the intergovernmental working group, which would meet for the first time in 2011. The Working Group and the new intergovernmental working group would work on separate, parallel tracks.

81. **Mr. Oliva** (Cuba) requested further information on mechanisms countries could use to ensure the accountability of security companies that had engaged in activities on their territory. In addition, he wished to know whether the Chairperson of the Working Group had any information on preliminary considerations provided by Governments or NGOs with regard to the draft convention. In the draft resolution to be presented on the topic, countries would be asked to support the intergovernmental open-ended group recently created by the Human Rights Council.

82. **Mr. Siddique** (Pakistan) said that his country agreed on the need for a legally binding convention on the activities of private military and security companies. Even when States chose to contract out certain security functions, they remained primarily responsible for holding members of private military and security companies accountable for violations and misconduct. Pakistan supported the recommendation of the Rapporteur that no companies with criminal records or whose personnel were under investigation for human rights violations should receive contracts from the United Nations. States should adhere to the same restriction. Information on steps to address the

plight of the victims of human rights violations committed by private military and security company personnel and on short-term measures to assure the accountability of perpetrators would be appreciated.

83. **Ms. Liu** Lingxiao (China) said that private military and security companies should comply with international human rights and humanitarian law and also with domestic legislation; in addition, their work should be monitored by international bodies. The countries which employed such companies should bear responsibility under international law for the conduct of such companies and the prevailing impunity and lack of accountability which they currently enjoyed should be ended. China favoured the development of a new international regulatory framework to regulate and monitor the activities of private military and security companies and welcomed the work already accomplished to that end by the Working Group. In that regard, she sought clarification of what the Working Group hoped to achieve in the next stage of its work and what it saw as the principal obstacles to its progress.

84. **Mr. Lukiyantsev** (Russian Federation) said that his country welcomed the preliminary work done by the Working Group on a possible international legal instrument on the activities of private military and security companies. In the Human Rights Council, the Russian Federation had supported the establishment of an intergovernmental open-ended working group to continue elaborating that instrument. The content of such an instrument required further work to make sure that its provisions respected international law. The work of other international forums on the matter should also be taken into account.

85. **Mr. Matgila** (South Africa) said that many developing countries lacked legislation to regulate the activities of private military and security companies. State responsibility for the use of force and the maintenance of peace and security could not be delegated to private companies. Private military and security companies must be held accountable for violations of human rights. A legally binding instrument to regulate the activities of such companies should be elaborated.

86. South African legislation prohibited mercenary activities. The country had been used to recruit former soldiers for mercenary activities, and private military and security companies undertaking mercenary activities in Africa had been registered there. It was hoped that the draft elements would fill gaps at the international level with regard to recruitment, financing, training and maintenance of private military and security companies to facilitate prosecution of private companies that violated human rights.

87. South Africa had had to repatriate scores of bodies of Iraqi nationals employed by such companies. In one case, a group of several dozen men had been apprehended while en route to Equatorial Guinea in an attempt to overthrow that country's Government. They had been employed by a private military and security company.

88. South Africa looked forward to the visit by the Working Group and hoped that it would help to improve understanding of the practical challenges of prosecuting persons who had been involved in mercenary activities.

89. **Mr. Nikitin** (Chairperson-Rapporteur of the United Nations Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination) said that a system governing the proper use of private military and security companies by the United Nations must be set up. That could be done within a year or so. In the longer term, intergovernmental negotiations on a convention should be conducted. The Working Group had conducted broad consultations and produced an expert document describing the principles the convention should contain. The creation of an intergovernmental working group would move the process to another level.

90. There were differences of opinion between countries which suffered from the activities of private military and security companies and those countries which registered them and sent them to conflict areas. There must be communication between the convention elaboration process and the process of self-regulation by companies. The code of conduct for companies explicitly stated that it created no legal obligations or liabilities. Such codes were therefore only the beginning.

91. Entrance control mechanisms were proposed as part of the convention. Such mechanisms would allow countries in which private military and security companies operated to decide whether or not to allow companies or specific personnel to operate in their territory. Complaint and country-to-country inquiry

mechanisms were part of a system which would grant every country the opportunity to ask a company's country of origin what the company was doing in the territory of the inquiring country. Legal mechanisms would be triggered by various international actors if companies violated humanitarian or human rights law.

92. Security companies were part of the modern world, and international organizations were probably not ready to stop using their services. Therefore, the convention took a balanced approach, aiming at a compromise between the possibility of regulating and the need to regulate. The experts were now passing the torch of the convention to representatives of Governments. It was hoped that within two to three years, the stage of full preparation of the instrument for adoption and implementation by the United Nations would be reached.

*The meeting rose at 1.05 p.m.*